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IN THE UNITED STATES DISTRICT COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

JOHN BRADY BARRINEAU,
Plaintiff,
vs.
PROMARINE TECHNOLOGY and
CABRAS MARINE CORPORATION,
Defendants.

CIVIL ACTION NO. CV05-0028

**DEFENDANT CABRAS MARINE
CORPORATION'S ANSWER TO
PLAINTIFF'S FIRST AMENDED
COMPLAINT; CERTIFICATE OF
SERVICE**

1. Cabras Marine lacks sufficient knowledge to either admit or deny paragraph 1.
2. Cabras Marine denies the allegations of paragraph 2, in particular the allegation that the plaintiff is a "seaman" or a "maritime worker."
3. Cabras Marine lacks sufficient knowledge to either admit or deny paragraph 3.
4. Cabras Marine admits it is a Guam-based corporation lawfully transacting business on Guam. Cabras Marine denies the allegation that, at all relevant times, it was transacting business in the CNMI.
5. Cabras Marine lacks sufficient knowledge to either admit or deny paragraph 5.

1 6. Cabras Marine lacks sufficient knowledge to either admit or deny paragraph 6.

2 7. Cabras Marine admits the allegations regarding the flag and use of the CAJUN,
3 but denies the allegations regarding home port operations.

4 8. Paragraph 8 contains "John Doe" allegations to which answer is required.

5 9. Cabras Marine lacks sufficient knowledge to either admit or deny paragraph 9,
6 and on that basis denies the allegations of paragraph 9.

7 10. Cabras Marine denies the allegations of paragraph 10.

8 11. Cabras Marine denies the allegations of paragraph 11.

9 12. Cabras Marine denies the allegations of paragraph 12.

10 13. Cabras Marine denies the allegations of paragraph 13.

11 14. Cabras Marine denies the allegations of paragraph 14.

12 15. Cabras Marine denies the allegations of paragraph 15.

13 16. On information and belief, Cabras Marine admits plaintiff was an employee of
14 Pro Marine Technology (PMT). Cabras Marine lacks sufficient knowledge to either admit or
15 deny the remaining allegations of paragraph 16, and on that basis denies the remaining
16 allegations of paragraph 16.

17 17. Cabras Marine lacks sufficient knowledge to either admit or deny the allegations
18 of paragraph 16 with regard to PMT's business operations. Cabras Marine denies the allegations
19 that PMT was at the time in question the owner, lessee, lessor, subcharterer, operator, or owner
20 pro hac vice of the CAJUN.

21 18. Cabras Marine lacks sufficient knowledge to either admit or deny paragraph 18
22 with respect to the nature of PMT's alleged contract for hull cleaning of the M/V HAGUE.
23 Cabras Marine admits only that hull cleaning work PMT performed on the HAGUE was done in
24 Apra Harbor, Guam.

1 19. Cabras Marine admits only that the CAJUN transported plaintiff, other employees
2 of PMT, and PMT's dive equipment to and from the dive site.

3 20. Cabras Marine denies each and every allegation of paragraph 20.

4 21. Cabras Marine lacks sufficient knowledge of PMT's dive and air supply
5 operations to either admit or deny the allegations of paragraph 21.
6

7 22. Cabras Marine denies each and every allegations of paragraph 20 with the
8 exception of admitting that the CAJUN transported plaintiff, other employees of PMT, and
9 PMT's dive equipment to and from the dive site.

10 23. Cabras Marine lacks sufficient knowledge to either admit or deny paragraph 23.

11 24. Cabras Marine lacks sufficient knowledge to either admit or deny paragraph 24.

12 25. Cabras Marine lacks sufficient knowledge to either admit or deny paragraph 25.

13 26. Cabras Marine lacks sufficient knowledge to either admit or deny paragraph 26.

14 25. Cabras Marine admits that at the time of the alleged incident, CAJUN was afloat
15 on navigable waters.
16

17 26. Cabras Marine lacks sufficient knowledge to either admit or deny paragraph 26.

18 27. Cabras Marine denies the allegations of paragraph 27.

19 28. Cabras Marine admits the allegations of paragraph 28.

20 29. Cabras Marine lacks sufficient knowledge to either admit or deny paragraph 29.

21 30. Cabras Marine denies paragraph 30.

22 31. Cabras Marine denies the allegations of paragraph 31.

23 32. As all allegations stated in paragraph 32 are directed to PMT, Cabras Marine
24 neither admits nor denies such allegations. To the extent any such allegation might be construed
25 to apply to Cabras Marine, such allegations are denied.
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27 33. Cabras Marine incorporates by reference its answers to paragraphs 1-32.
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1 34. Cabras Marine denies plaintiff's allegation regarding "seaman" status. As for
2 allegations against PMT, Cabras Marine neither admits nor denies such allegations. To the
3 extent any such allegation might be construed to be against Cabras Marine, such allegations are
4 denied.

5 35. As all allegations stated in paragraph 35 are directed to PMT, Cabras Marine
6 neither admits nor denies such allegations. To the extent any such allegation might be construed
7 as directed towards Cabras Marine, such allegations are denied.

8 36. As all allegations stated in paragraph 36 are directed to PMT, Cabras Marine
9 neither admits nor denies such allegations. To the extent any such allegation might be construed
10 as directed towards Cabras Marine, such allegations are denied.

11 37. As all allegations stated in paragraph 37 are directed to PMT, Cabras Marine
12 neither admits nor denies such allegations. To the extent any such allegation might be construed
13 as directed towards Cabras Marine, such allegations are denied.

14 38. As all allegations stated in paragraph 38 are directed to PMT, Cabras Marine
15 neither admits nor denies such allegations. To the extent any such allegation might be construed
16 as directed towards Cabras Marine, such allegations are denied.

17 39. As all allegations stated in paragraph 39 are directed to PMT, Cabras Marine
18 neither admits nor denies such allegations. To the extent any such allegation might be construed
19 as directed towards Cabras Marine, such allegations are denied.

20 40. As all allegations stated in paragraph 40 are directed to PMT, Cabras Marine
21 neither admits nor denies such allegations. To the extent any such allegation might be construed
22 as directed towards Cabras Marine, such allegations are denied.

23 41. As all allegations stated in paragraph 41 are directed to PMT, Cabras Marine
24 neither admits nor denies such allegations. To the extent any such allegation might be construed
25 as directed towards Cabras Marine, such allegations are denied.

1 as directed towards Cabras Marine, such allegations are denied.

2 42. As all allegations stated in paragraph 42 are directed to PMT, Cabras Marine
3 neither admits nor denies such allegations. To the extent any such allegation might be construed
4 as directed towards Cabras Marine, such allegations are denied.

5 43. As all allegations stated in paragraph 43 are directed to PMT, Cabras Marine
6 neither admits nor denies such allegations. To the extent any such allegation might be construed
7 as directed towards Cabras Marine, such allegations are denied.

8 44. As all allegations stated in paragraph 44 are directed to PMT, Cabras Marine
9 neither admits nor denies such allegations. To the extent any such allegation might be construed
10 as directed towards Cabras Marine, such allegations are denied.

11 45. As all allegations stated in paragraph 45 are directed to PMT, Cabras Marine
12 neither admits nor denies such allegations. To the extent any such allegation might be construed
13 as directed towards Cabras Marine, such allegations are denied.

14 46. As all allegations stated in paragraph 46 are directed to PMT, Cabras Marine
15 neither admits nor denies such allegations. To the extent any such allegation might be construed
16 as directed towards Cabras Marine, such allegations are denied.

17 47. Cabras Marine incorporates by reference its answers to paragraphs 1-46.

18 48. Cabras Marine denies the allegations of paragraph 47.

19 48. Cabras Marine denies the allegations of paragraph 48.

20 49. Cabras Marine denies the allegations of paragraph 49.

21 50. Cabras Marine denies the allegations of paragraph 50.

22 51. Cabras Marine incorporates by reference its answers to paragraphs 1-50.

23 52. Cabras Marine denies the allegations of paragraph 52.

24 53. Cabras Marine denies the allegations of paragraph 53.

1 4. Plaintiff's exclusive remedy for any work he may have sustained is workers
2 compensation.

3 5. To the extent plaintiff has an administrative remedy against PMT or Cabras
4 Marine, which is denied, he has failed to exhaust it.

5 6. Plaintiffs injuries were either caused or contributed to by Plaintiffs own
6 negligence and comparative fault thus barring or reducing Plaintiff's claims and damages
7 accordingly.

8 7. Plaintiff's injuries were either caused or contributed to by third persons over
9 whom Cabras Marine has no control or right of control, thus barring this action against Cabras
10 Marine.

11 8. Plaintiffs damages, if any, were caused by solely by the negligent superseding
12 acts of the Plaintiff and/or other persons and circumstances over which Cabras Marine had no
13 control or right of control.

14 9. Plaintiff has failed to mitigate his alleged damages and has failed to take
15 reasonable steps to avoid the consequences of his alleged injury.

16 10. Cabras Marine intends to rely upon the additional defenses of waiver, estoppel,
17 unclean hands, statute of limitations, failure to exhaust administrative remedies, workers
18 compensation exclusivity, and assumption of risk.

19 11. The vessel was seaworthy at all times.

20 12. The Court lacks in personam personal jurisdiction over Cabras Marine.

21 13. The Court lacks in rem jurisdiction over the M/V Cajun.

22 14. The Court lacks subject matter jurisdiction.

23 15. Cabras Marine's further defenses include all those allowed by federal and local
24 statutes and applicable common law, which may become apparent as discovery is conducted.
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CROSS CLAIM

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2 1. Cabras Marine alleges this Cross-Claim against Pro Marine Technology (PMT)
3 under Fed. R. Civ. P. 13(g).

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5 2. Notwithstanding any contrary allegation, denial, assertion, or other averment
6 contained in the above answer to complaint and defenses, and entirely without prejudice to
7 anything stated therein, Cabras Marine asserts the following Cross-Claim against PMT.

8 3. On information and belief, PMT employed Plaintiff as a diver.

9 4. On information and belief, PMT's work includes performing underwater
10 maintenance, similar to that allegedly being performed by plaintiff on the M/V HAGUE, in
11 particular, bottom hull cleaning.

12 5. Cabras Marine does not nor did Cabras Marine perform such work or similar
13 work.

14
15 6. Cabras Marine did not assist or partner with PMT in any way in the performance
16 of such work, nor did Cabras Marine have any other involvement in PMT's work.

17 7. For its maintenance work on the M/V HAGUE, PMT required water
18 transportation for its employees and their dive equipment to and from the dive site in Apra
19 Harbor, Guam. For this PMT approached Cabras Marine.

20
21 8. Cabras Marine agreed to provide the M/V CAJUN on a daily hire basis. The
22 CAJUN was despatched hot, that is, with a crew and fully operational.

23 9. On or about May 22, 2005, the CAJUN transported plaintiff to the dive site. That
24 day, plaintiff was allegedly involved in an incident while performing underwater maintenance
25 work to the M/V HAGUE. As a result, plaintiff has alleged certain injuries, and seeks damages
26 therefore.
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1 10. Neither plaintiff, nor any other PMT employee, contributed to the operation or
2 navigation of the CAJUN on May 22, 2005 or any other day.

3 11. Cabras Marine supplied no equipment or manpower to PMT's diving and
4 maintenance work on May 22, 2005 or any other day.

5 12. Cabras Marine operated no equipment connected to PMT's dive or maintenance
6 work on May 22, 2005 or any other day.

7 13. Neither appurtenance nor crew of the CAJUN was utilized in PMT's dive and
8 maintenance work on May 22, 2005 or any other day. Rather, the CAJUN motored to the dive
9 site, moored, and stood by while PMT performed the maintenance work.

10 14. Cabras Marine did nothing to cause or contribute to cause the incident alleged by
11 plaintiff.

12 15. Cabras Marine had no obligation to PMT (or the Plaintiff) other than to provide
13 safe transportation to and from the dive site.

14 16. Cabras Marine did not supervise or otherwise direct the work or methods of work
15 of PMT employees, including the Plaintiff.

16 17. To the extent that PMT did not, as an employer or otherwise, meet its obligations
17 and duties to plaintiff, if any, and such caused plaintiff's injuries, PMT is directly liable to
18 plaintiff for such injuries and damages.

19 18. Under the circumstances described herein, PMT is legally obligated to indemnify
20 Cabras Marine from all claims, losses, costs and expenses, including attorneys fees, arising or
21 resulting from the alleged injuries to plaintiff and plaintiff's lawsuit.

22 WHEREFORE, Cross-Claimant Cabras Marine prays for:

23 1. Cross-Claim Defendant PMT to appear and answer in this action;

24 2. In the event any liability is assessed against Cabras Marine, judgment against
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1 PMT in favor of Cabras Marine for indemnity or contribution for the liability, damages, costs,
2 and actual attorneys fees, all in accordance with the facts and law;

3 3. Judgment against plaintiff on the claims asserted jointly against PMT and Cabras
4 Marine;

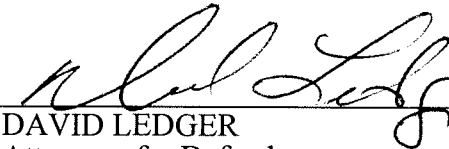
5 4. Judgment against Plaintiff on the claims asserted against PMT;

6 5. Judgment against plaintiff on the claims asserted against Cabras Marine; and

7 6. Further relief the Court deems just.

8 DATED: Hagåtña, Guam, August 21, 2006.

9
10 CARLSMITH BALL LLP

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12 DAVID LEDGER
13 Attorneys for Defendant
14 Cabras Marine Corporation
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 21st day of August 2006, I will cause to be served, via hand delivery, a true and correct copy of **DEFENDANT CABRAS MARINE CORPORATION'S ANSWER TO PLAINTIFF'S FIRST AMENDED COMPLAINT** upon the following Counsels of record:

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DATED: August 21, 2006.



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